

Re: Spur Lines - BPRP past costs 📎

Clifford Villa to: Wurtzler, Gail

06/08/2009 06:47 PM

Cc: "Trueblood, Craig", Darrell.Early, "Lietz, Denise", GLHONEYM, RCBYLSMA,
"Lawrence, Robert", "Handy, Sara", SHimmelh, Ed Moreen, Cyndy Mackey,
MZevenbe

Gail:

First, thank you for the timely submission of the revised SOW. I will be reviewing it on a plane tomorrow as well as working on my promised piece of the ARARs for the RAWP.

As for the FROWW definition, it appears we have clearly reached different understandings. Our understanding of the FROWW remains unchanged from the FROWW as defined in the Trails SOW and as presented in our special notice last fall for the Wallace Yard and Spur Lines site. I realize that the RRs' Good Faith Offer proposed a change to this definition, but it remained in redline through some revisions and I'm not sure when that marker disappeared. It very well could have been some editorial oversight on my part, and if so, I apologize for the confusion, but our view remains the same. This view is also consistent with the EE/CA Sec. 6.2, as you referenced below. That section makes a clear distinction between field observations, including "Visible, existing portions of railbed," and remedial action, including "Cap functional railroad ROW." This, I believe, reflects the same difference of railbed "actually used" and the FROWW consistent with our original definition. The remedy selected through the EE/CA and Action Memo clearly referred to the broader FROWW, not the railbed.

That said, I'm not certain of the extent of the practical difference between the "railbed" approach and the FROWW. Was this ever an issue for the Trails CD? Could this be resolved through agreement on the RADs? What does this mean for reimbursement of BPRP work? As for the latter question, I agree we should do some prompt fact-gathering. This may be tricky because I understand that the DEQ individual who prepared the spreadsheets has since left DEQ. But if we can get any knowledgeable technical people to help explain the calculations for past work, I would appreciate it, especially if this could be scheduled for this Thursday, when I'm back in the office.

Darrell/Nick: can either of you help arrange a conference call to discuss BPRP cost calculations? I'm available anytime Thursday after 9:30 am Pacific.

Enough for now. Let's keep talking.

Cliff Villa
Assistant Regional Counsel
U.S. EPA Region 10

"Wurtzler, Gail"

CONFIDENTIAL SETTLEMENT COMMUNICATION

06/08/2009 11:17:30 AM



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06/08/2009 11:17 AM

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Subject: Spur Lines - BPRP past costs

CONFIDENTIAL SETTLEMENT COMMUNICATION

Cliff and Darrell,

Arcadis has looked at some of the information that IDEQ provided regarding past costs for BPRP cleanup. IDEQ's figures make it a little difficult to tell what is going on. However, it appears that the IDEQ did NOT use a FROWW definition in determining which portions of the costs to bill the railroads. As you know, the FROWW is the area that the railroads actually used for the railbed and supporting embankments and is the area identified in the EE/CA (section 6.2) for remediation. The FROWW is also the area that might have been built using waste rock or on which cars conceivably could have leaked as described in section 2.10.1 of the EE/CA. Instead of using the FROWW, it appears to us that IDEQ billed the railroads based on the size of any area that was formerly owned by a railroad using county assessor maps.

BNSF and UPRR suggest that we schedule a conference call with the appropriate IDEQ and railroad technical people to discuss this in more detail. Ordinarily, we would suggest that the technical people discuss and report to the lawyers. However, because of EPA's proposed schedule, it might be helpful to have the lawyers listen to the technical discussion on this issue at the same time.

Please let us know how you would like to proceed. Thanks.

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